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Judging Women

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Abstract

Judge Sonia Sotomayor's assertion that female judges might be "better" than male judges has generated accusations of sexism and potential bias. An equally controversial claim is that male judges are better than female judges because the latter have benefited from affirmative action. These claims are susceptible to empirical analysis. Primarily using a dataset of all the state high court judges in 1998-2000, we estimate three measures of judicial output: opinion production, outside state citations, and co-partisan disagreements. We find that the male and female judges perform at about the same level. Roughly similar findings show up in data from the U.S. Court of Appeals and the federal district courts.

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1. INTRODUCTION

Justice Sonia Sotomayor's controversial suggestion, prior to her elevation, that women are better judges than men ignited an inferno of criticism in the months leading up to her confirmation hearings, and she backed away from it.[1] But she may well have believed it, and certainly she said it on numerous occasions to what we suspect were receptive audiences. The claim contradicts a more familiar notion that presidents and other elected officials must engage in affirmative action favoring women in order to ensure that the judiciary has a sufficient mix of women and men. The pool of people from whom judges are normally taken—middle-aged lawyers—contains many more men than women, because twenty years ago more men than women attended law school, and because in the intervening years more women than men have abandoned prestigious legal positions in order to take care of children or pursue other opportunities. If the federal judiciary is to contain a respectable proportion of women, politicians will have to appoint women who are less qualified than men. Then-Judge Sotomayor's claim that, because of their backgrounds, women are better judges than similarly qualified men, implies that presidents do not appoint less competent women but merely engage in a kind of statistical reverse discrimination by treating femaleness as a proxy for judicial quality.

The idea that women might be better judges than men, or at least as good as men, represents a radical break from taken-for-granted assumptions of the recent past. Female judges were rare before the 1970s (Schafran 2005). In 1977, Rose Bird was the first woman appointed to the California Supreme Court (Purdum 1999). In 1980, fourteen

[1] The statement that received the most attention was one made by Judge Sotomayor in 2001 at a conference at Berkeley, where she said that ""I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life." (Lithwick 2009). A prior statement, in 1994, was broader and said that "women" judges might reach "better" conclusions. (Dickerson 2009).

women sat on state high courts among several hundred men (Curriden 1995). Sometime after that the political establishment decided that women should have greater representation on the courts. By 1995, over fifty female judges had joined the state high courts (Curriden 1995; Songer & Crews-Meyer 2000). In the period from 1998 to 2000, over 100 women sat on the state high courts, roughly a quarter of the total.[2] The federal courts similarly witnessed a dramatic increase in the fraction of female judges the past two decades (Hurwitz & Lanier 2008).

Much of this change no doubt resulted simply from the increasing numbers of women who have entered the legal profession since the 1970s. But there is little doubt that politicians engaged in affirmative action, in the sense of giving preference to female candidates who are less qualified than men on the basis of standard measures, such as length of time in the profession. In general, women serving on state high courts starting in the late 1990s went to law school in the mid 1970s, where they were the distinct minority in law schools and in the legal profession. In addition, the women who were eligible for the judgeships we study may have been subject to gender discrimination during their careers, thus narrowing the pool of available female judge candidates further. If there is a smaller pool of women from which to select judges (compared with the pool of potential male judges), then forcing the selection of a substantial number of women may result in more qualified men getting passed over (compared with female candidates), thereby reducing overall court performance.[3] We will discuss the evidence in detail below; for now, the clearest evidence is that, in the dataset of state high court judges we

[2] From our dataset.
[3] For complaints about Judge Sotomayor's nomination along these lines, see Buchanan 2009; Shapiro 2009.

use in this paper, women practice for 21 years on average before becoming judges, whereas men practice 26 years on average before becoming judges.

A number of rationales can be given for affirmative action for women. One such rationale is political. If women voters believe that female judges understand and represent their perspectives better than do male judges (the "differential perspectives" view), they will demand more female judges and, as a result, politicians will cater to those interests (Solowiej, Martinek & Brunell 2005). Another rationale is that the addition of women to the decision-making mix improves the quality of group decisions. Greater diversity of perspectives can protect against groupthink and can add new information to the decisional calculus (Martin 1990; Farhang & Wawro 2004; Massie et al. 2002). Some suggest, for example, that the presence of a woman judge on a court can alter (and maybe improve) the decision making of her male colleagues (Songer & Crews-Meyer 2000; Peresie 2005). Yet another perspective suggests that female judges bring value as role models (Tacha 2007; see Mansbridge 1999 for a more general argument).

The bulk of the literature on gender and judging examines what we call the "differential viewpoints" question.[4] This literature focuses on the subject areas where female judges are likely to bring a distinctive perspective to bear. The most prominent finding is that female judges are more likely to favor plaintiffs in sex discrimination cases

[4] See Beiner 1999; Davis 1993; Sherry 1986. Empirical research in this area has asked whether there are systematic variations in the outcomes of cases in certain areas due to the different perspectives women bring to the bench arising from their gender and likely different life experiences (Davis 1993; Allen & Wall 1993). Scholarship has examined whether female judges rule differently in subject areas perceived to involve women's issues or areas where women's supposed liberal leanings will make a difference, such as criminal law matters (Songer et al., 1994; Jackson 1997; Martin & Pyle 2000; Stribopoulos & Yahya 2007). Some early research that looked at differences in criminal dispositions, among other things, found few differences (Kritzer & Uhlman 1977; Gruhl at al. 1981; Walker & Barrow 1985) but recent work has found some gender differences in sexual harassment and discrimination cases (Davis et al. 1993; Peresie 2005; Boyd, Epstein & Martin 2007). Although the overall picture is unclear (Palmer 2001), the general story appears to be that female judges support the rights of women more strongly than do their male colleagues (Martin & Pyle 2005; McCall & McCall 2007; McCall 2008).

(Peresie 2005; Boyd, Epstein & Martin 2007). This result does not, however, cast light on whether female judges are better or worse than men. The empirical research has not established that the female judges are legally correct in these cases; it is possible that those plaintiffs should have lost.

Our focus is on the relationship between the gender of judges and judicial quality—the question raised by the affirmative action issue. Drawing on our prior work on judicial quality, we focus on opinion publication, citations, and disagreements with co-partisans (reflecting judicial independence) as metrics of judicial performance. Using three datasets—justices sitting on the highest courts of the fifty states from 1998 to 2000, federal district judges from 2001 to 2002, and federal appellate judges from 1998 to 2000—we test the hypothesis that female judges are worse (or, as Justice Sotomayor claimed, better) than men. We find no evidence for this hypothesis.

2. PREDICTING GENDER DIFFERENCES

One of the distinctive characteristics of U.S. courts, as compared to their European and Asian counterparts, is that judges come to the bench later in life, roughly around age fifty, after significant experience outside the judiciary. The aggregation of these prior experiences constitutes a judge's human capital—in effect, her training to become a judge. A lawyer with more legal experience should be a better judge than a lawyer with less legal experience. In addition, attending a better law school should, theoretically, provide better training for the tasks associated with judging. Further, because judicial candidates coming to the bench have a major portion of their professional career behind them, they have likely passed through numerous selection screens already.

These factors suggest two opposite sets of predictions. Under what we call the Preference Story, women who are less qualified than men are selected to be judges, with the result that female judges perform less competently than do male judges. Our empirical tests focus on the Preference Story, which has support in the literatures on lawyers and women. Under the Screening Story, pre-judicial barriers to entry—including sex discrimination and employment conditions that are hostile to the needs and interests of women—screen out less competent women. If the pool of women is smaller than the pool of men, the women who remain in that pool after the informal screening are higher quality than the men. The Screening Story implies that female judges should be as competent as, or more competent than, male judges.

2.1 The Preference Story

2.1.1. Women Law Students and Lawyers

Research on gender and legal education suggests that women have a lower quality experience in law school than do their male colleagues. They participate less in classroom discussion, feel more alienated, and underperform in terms of the traditional indicators of success in law school such as grades, law review membership, and publications (Banks 1990; Guinier, Fine & Balin 1997; Mertz, Njogu & Gooding 1998; Yale Law Women 2001-02; London, Downey & Anderson 2007; Mertz 2007; Leong 2009). In addition to formal legal training, law schools also provide students with entry into a network of contacts. If female students are disproportionately excluded from social networks among students, faculty, and alumni, then female students receive less value from their educations (Iskander & Bashi 2003).

This pattern of limited access continues at the next stage, early legal employment. The jobs that students take in their early years are disproportionately likely to be in the private sector, both because there are more of these jobs than in the public sector and because many public sector jobs require legal experience.[5] These initial jobs in the private sector, according to what recruiters tell students, are supposed to provide both on-the-job training and a network of contacts (Garth & Sterling 2009). Research on the operation of private law firms, particularly the large ones, however, suggests that these firms do not provide equal amounts of training and networking opportunities (Garth & Sterling 2009). Much of the work is routine and done in relative isolation. Work that provides training and client contact is scarce and given out to those deemed most likely to succeed in the law firm tournament (Wilkins & Gulati 1996; 1998). It is likely that those who succeed in making partner at these firms are the ones who receive the better training and networking opportunities. Scholars have found that women succeed at private firms at lower rates than men (Epstein 1993; Kagan 2006; O'Brien 2006; Leber 2009). One explanation for this lack of success is that firms assign women to more of the routine work and offer them fewer of the scarce training and networking opportunities.[6]

2.1.2. Female judges

Our statistical analysis focuses on judges in the late 1990s, who for the most part went to law school in the 1970s or before. As of the early 1970s, the fraction of women

[5] In addition to private practice job disparities, men and women have uneven rates of clerkships. Judicial clerkships are among the most elite jobs out of law school, supposedly providing the best training. Extant research has found that women are less likely than their male counterparts to obtain an elite clerkship (Kaye & Gastwirth 2008).

[6] A key element of the dynamic here is thought to be the difficulty that women have in finding mentors who can transfer tacit knowledge (Garth & Sterling 2009). The causal mechanism here does not have to involve explicit discrimination. Rather, if women are perceived as having a lower likelihood of success at these firms--perhaps because of stereotypes--then the firms' partners may not invest as much in training women associates.

in law schools was in the 10-20% range (Epstein 1997; Savage 2009). Because women in this cohort likely dropped out of law at a greater rate than men to care for family members or pursue other opportunities, the effective pool of women qualified for judgeships was probably even smaller by the 1990s. Despite the relatively small pool of potential female judges, the fraction of female judges in our dataset of state high court judges from 1998 to 2000 was 24.1%. Under the preference story, the disproportionate selection of women judges—given the lower training among women attorneys both at law school and in their early employment—leads to lower qualified judges.

Finally, there is the matter of discrimination women might face after they become judges. A series of reports produced by gender bias task forces around the country starting approximately two decades ago suggested the presence of bias against women participating in the judicial system at multiple levels (Resnik 1996; Kearney & Sellers 1996, provided overviews). Some of that bias has been toward female judges where some female judges report getting less respect from colleagues, court staff and lawyers. If that is the case, female judges probably have to expend greater effort than their male colleagues to get their views heard and requests fulfilled (Barteau 1997, Mississippi Task Force Report 2004; Pennsylvania Task Force Report 2008). Justice Ginsburg recently observed:

> It was a routine thing [in the past] that I would say something and it would just pass, and then somebody else [who was male] would say almost the same thing and people noticed. I think the idea in the 1950s and '60s was that if it was a woman's voice, you could tune out, because she wasn't going to say anything significant. There's much less of that. But it still exists, and it's not a special experience that I've had. I've talked to other women in high places, and they've had the same experience (Bazelon 2009).

Research from other professional settings suggests that women sometimes get stuck with disproportionate shares of administrative burdens; this might occur on the courts as well (Worrell 2001). The prospect of bad working conditions might deter more qualified women (with a resulting higher opportunity cost) from pursuing or accepting judgeships—further diminishing the quality of women judges. The possibility of discrimination also suggests caution in interpreting statistical results: highly qualified female judges could perform worse than men because their working conditions are harsher.

2.1.3. Women, Risk Aversion and Conflict Avoidance

The third body of literature relevant to our predictions concerns women generally, as opposed to women lawyers or judges. Multiple studies find that women display a greater degree of risk aversion than do men (Levin, Snyder, & Chapman 1988; Powell & Ansic 1997; Jianakoplos & Bernasek 1998; Sunden & Surette 1998; Schubert et al. 1999; Halek & Eisenhauer 2001; Powloski & Atwal 2008; Corrigan 2009). Women are also found to be less competitive, more conflict averse and less prone to aggression than are men (Stuhlmacher and Walters 1999; Campbell, Muncer & Bibel 2001; Gneezy, Niedele & Rustichini 2003; Croson & Gneezy 2008). In addition, some research shows that women find risky situations more stressful than men (Kerr & Vlaminkx 1997), while men tend to be overconfident and more willing to take risks (Barber & Odean 2001; Bengtsson, Persson & Willenhag 2004).

The implications of these studies for judicial performance generally are ambiguous. For example, risk-averse judges might be better because they take greater care with their opinions, or worse because they fear offending colleagues or powerful

people. That said, there are implications for certain specific aspects of judicial performance, such as the willingness to openly disagree with a co-partisan. The literature suggests that judges do not dissent lightly. The presence of a dissent not only brings additional scrutiny by bringing outside attention to a disagreement among court members, but also creates additional work for all the judges because they have to do more to justify their positions (Posner 2008). As a result, judicial colleagues can sometimes take umbrage at dissenting behavior (Posner 2008). A number of courts appear to have strong norms disfavoring dissents (Brace & Hall 2005). Risk-averse and conflict-averse judges, therefore, are likely to dissent less; and particularly so with those on their team (co partisans). A caveat here is that some studies of professional women suggest that the effects of training and selection can remove some of the gender differences mentioned above (Croson & Gneezy 2008).

2.2. The Screening Story

The Screening Story predicts that female judges will either outperform or do no worse compared with their male colleagues. The argument rests on selection effects. Women lawyers, at every stage, starting in law school, have had higher barriers to cross than their male counterparts. The fact of the higher hurdles that face women means that many more women will fail to cross the hurdles than men. However, the women who do succeed in crossing the higher hurdles and make it to judicial selection will likely be more capable than their male counterparts who had to cross lower hurdles to get to the same stage. In a discussion of Judge Sotomayor's comments, Dahlia Lithwick, drawing from research in anthropology, speculates as to whether female judges, have had to learn

to understand both male and female perspectives during their careers. By contrast, male judges have probably not had to learn the female perspective (Lithwick 2009).

In contrast to the Preference Story, one might not expect the women in the Screening Story to be risk averse or conflict averse. Given the hurdles they have had to clear, those women that remain probably have a greater inclination toward taking risks and enduring conflicts in order to succeed. Further, having had to succeed in male environments probably might mean that these women are not primarily interested in certain "women's" topics such as family law. Instead, they are probably interested in, and adept at, tackling a wide range of issues.

2.3. Data and Measures

Our dataset has information on several objective metrics of judicial performance for all the sitting state high court judges in the U.S. for the years 1998-2000. There are 409 judges, of whom 103, or 25.18% are female. For each of these judges, we collected data on three separate measures, including the number of published opinions, the numbers of citations from outside the state (that is, non-precedent driven citations), and open disagreements (dissents) with those from the same political party background (our measure of judicial independence). Others have questioned the value of the objective measures and some have suggested alternate measures (Cross & Lindquist 2009; Baker, Marshall & Feibelman 2009; Stith 2009). For purposes of this article, we tie our predictions of gender differences to the objective measures as opposed to general notions of quality. While the measures are rough, we have found in other work that they are correlated with other factors in a theoretically sound way (Choi, Gulati & Posner 2009a,

2009b, 2009c)[7] and so provide at least a starting point in assessing gender differences in judicial quality. We also assume that the inadequacies of our objectives measures are not a function of gender, allowing us to assess how men and women perform differentially on our measures.[8] In analyzing the results, we control for variations among the states.

2.3. Predictions

The predictions below are simplified hypotheses based on the Preference Story.

2.3.1. Opinion Publication Rates

Publishing an opinion, as opposed to issuing an unpublished disposition, we assume, takes greater effort (Choi, Gulati & Posner 2009a). Further, the designation of the opinion as published brings greater external scrutiny and, therefore, greater risk of criticism. We predict under the Preference Story that female judges will publish fewer opinions than their male colleagues because they are likely to have received lower amounts of legal training and are more likely to be risk averse. The Selection Story provides the opposite prediction—women judges should publish either more or at least no fewer opinions compared with male judges.

The publication of an opinion gives it greater precedential weight. If women are more interested in advancing the law in certain areas, they will focus their publication efforts in those areas. We predict that women will publish more opinions in areas such as

[7] For example, elected judges and appointed judges differ in a systematic way. In addition, judges close to retirement are less productive and judges with more court experience are more productive. (Choi, Gulati & Posner 2009a).

[8] At more than one faculty workshop, we have been asked whether one of our measures, citation counts, was subject to gender bias. The point being that female judges might receive fewer cites because men will be more likely to cite each other. This is likely to be the case if the men hold negative stereotypes of the women or have networks of reciprocal citations from which women are excluded. In a different article, using a dataset of federal appeals court judges, two of us examined this question and found no indication of gender bias (Choi & Gulati 2008). But, should such a bias exist here, it would strengthen our conclusions.

family law and civil rights (which includes sex discrimination and sex harassment) and fewer opinions in business law.

2.3.2. Citations

Citations by outside authorities are a commonly used measure of influence (Landes, Lessig & Solimine 1998). We have data on citations by a variety of outside actors including other state courts, the federal courts outside the relevant circuit and law reviews. Citations to judicial opinions have been described as measuring multiple characteristics of the underlying opinions including quality of analysis (Choi, Gulati & Posner 2009a, 2009b, 2009c), nimbleness in writing (Vladeck 2005), and creativity (Posner 2005).

If women lawyers ascend to the bench with fewer legal skills and are also more risk averse than their male colleagues, as predicted under the Preference Story, female judges should write less frequently cited opinions. If women are less likely than are their male colleagues to have built up networks among lawyers and other judges then that should also result in fewer citations. And if the techniques of reasoning and the perspectives of female judges are markedly different from those of male judges, then the majority of judges (who are men) will likely prefer to cite opinions by male judges. In contrast, we predict under the Selection Story that the opinions of female judges will receive the same if not greater number of citations compared with male judges.

Beyond the Preference and Selection Stories, other predictions are possible. Some may predict that women judges may receive a differential number of citations in certain subject matter areas, also driven by stereotypes. If there is a perception that women understand better and pay more attention to issues in certain areas that fall into

what is considered a "women's" domain such as family law or sex discrimination cases, we would expect to see more citations to women there. Conversely, we would expect fewer citations to female judges in areas such as business law.

c. *Disagreement*

Our third measure looks at the willingness of a judge to disagree with co-partisans, either by dissenting against their opinions or writing majority opinions that induce dissents—our measure of judicial independence. In calculating this measure, we look at dissents–which are open and public statements of disagreements. We look first at (1) the number of disagreements by a judge against co-partisans divided by the total number of disagreements by the judge. This gives us a "raw" sense of how often a particular judge is in open disagreement with co-partisans. A highly partisan judge, for example, may never come in disagreement with a co-partisan (preferring to save her dissents primarily for judges from the opposite political party). How often a judge opposes a co-partisan, of course, will depend on the number of co-partisans on the same bench. If a judge is the lone Democrat on a specific court, the judge will necessarily oppose opposite party judges (due to the lack of any co-partisans). To control for court composition, we look second at (2) the total number of majority opinions by co partisans (opportunities to dissent) over the total number of majority opinions by all judges on the court.[9]

We then define independence as the difference between (1) the number of disagreements by a judge against co-partisans divided by the total number of

[9] There are problems with this measure that we document at length in Choi, Gulati & Posner (2009a; 2009b; 2009c). Among those is that our measure does not work for the handful of states where all the judges are of the same party. Accordingly, we drop those states from our independence calculations. Further, as a function of the number of judges of each party on a court, the potential scores for a judge are bounded. To adjust for this, we calculated a simpler alternate 0-1 measure of independence.

disagreements by the judge and (2) the total number of majority opinions by co partisans (opportunities to dissent) over the total number of majority opinions by all judges on the court. A more negative score corresponds to a judge who writes opposing opinions against opposite-party judges more frequently than the background pool of majority opinions authored by opposite-party judges. Conversely, a more positive score corresponds to an authoring judge who writes opposing opinions less frequently against opposite-party judges compared with the background pool of opinions (and thus more frequently against co-partisans).

We treat a more positive score as indicative of a more independent judge. Others might view disagreement among judges as a negative—a sign of disagreeability or cantankerousness. Regardless of perspective, the prediction under the Preference Story is that women will disagree less. Female judges, because they are less likely to be willing to engage in open conflict, particularly with co-partisans, should—if the Preference Story is correct—receive lower scores on our independence (or disagreeability) measure. Further, their relatively lack of training (from discrimination in school and in the workplace) in legal reasoning should also make them less willing to engage in conflict, since their opponents (mostly men) will have greater skill and experience. In contrast, the Selection Story predicts that women judges will receive a higher independence score.

To summarize, we have five predictions regarding gender differences to show up in our measures if the Preference Story is correct. Female judges will publish fewer opinions overall (Hypothesis 1), but more opinions on topics of specific interest to women such as family law (Hypothesis 2). Female judges will be cited less overall (Hypothesis 3), but more on topics of specific interest to women such as family law

(Hypothesis 4). Women will score lower on their willingness to disagree with co partisans (Hypothesis 5). Three of these predictions (Hypotheses 1, 3 and 5) address the question of whether female judges underperform their male counterparts. The other two (Hypotheses 2 and 4) test whether (any) differential performance on the part of female judges is explainable due to a specific subject matter focus on the part of female judges.

3. DIFFERENT PATHWAYS

3.1. Education and Training

The Preference Story assumes that female judges have less experience and lower quality training than male judges. We test whether this assumption is true. In our data set, female judges have significantly worse educational credentials than do male judges. Panel A of Table 1 reports summary statistics. The average U.S. News rank[10] of the law school attended by a male judge is approximately 52 and that for a woman judge is 62.[11] The rankings difference is larger for undergraduate education, where the average college ranking for a woman judge is 154 and that for male judge is 125.[12] Men were also more likely to attend graduate programs that offer LLMs for judges.[13]

[Insert Table 1 about here.]

3.2. Prior Professions

[10] In order to have consistent and reliable information about the rankings of the schools that these judges attended, we used data from 2002. US News and World Report data on college rankings is only available back to 1983. In other words, we do not have information on the rankings at the time these judges attended college and law school. Nonetheless, these rankings tend to be fairly stable over long periods of time.
[11] The ten-point difference in JD rankings is statistically significant to the 0.0321 level.
[12] The difference between male and female judge's undergraduate college rankings has a p-value of 0.0023.
[13] Two other variables that we also examined were judicial clerkships and membership of professional law reform associations such as the American Law Institute. We find that men are more likely to have done judicial clerkships, but the data is only available on a small group of judges. Obtaining a clerkship is not only a sign of high performance in law school, but a source of legal training. On law association membership, the numbers for women are significantly higher. To the extent these associations are sources of training, they could add to a member's human capital. We were unable to find any credible indications in the literature, however, that membership of these organizations enhances human capital.

Panel A of Table 1 reports the primary prior professions of these judges. One might expect that women judges would come more often from public sector jobs, consistent with the patterns for women lawyers more generally (Dau-Schmidt et al. 2007; After the JD Study 2004). There are several possible explanations for why women are likely to move to the public sector: first, women have more difficulty in tackling the work-life conflict presented by modern law firm jobs (Garth & Sterling 2009). Second, women – because of discrimination or less mentorship – are less likely to receive either training or promotion in the law firm context (Garth & Sterling 2009). There is also research on entering women law students suggesting that they are initially more interested in public interest work than their male colleagues are (Dau-Schmidt et al. 2007). By the end of law school, however, the expectations of men and women students appear to converge in favor of private sector jobs (Dau-Schmidt et al. 2007; Ku 2008). Panel A of Table 1 reports that while 83.6% of male judges were in private practice, only 76.5% of female judges were. This difference however is not statistically significant.

3.2. Marriage, Children and Age

Background variables such as marriage and number of children, although not necessarily part of the Preference Story, are potentially relevant control factors because gender differences in these variables can have an impact on performance. Age is also a potentially revealing variable in that younger judges are likely to have less experience and training.

The women in our data are less likely to be married as the men and more likely to be divorced.[14] This is consistent with the reports on women professionals, including lawyers, where these women have both lower marriage rates and higher divorce rates than their male counterparts (Wilson 2008).[15] We find also that male judges have more children than female judges. Reported in Panel A of Table 1, the average is one child for the women versus just under two children for the men (t-test of difference significant with a p-value of 0.000). Women also are less likely to have children than men (43% of the women have children versus 57% of the men).[16] These numbers are perhaps more indicative of the Screening Story than the Preference Story: women who succeed at becoming judges at a high level are those who have chosen to take fewer family responsibilities over their careers.

In terms of age, the women in our sample attended and graduated from law school later than their male colleagues. The average JD date for women is 1972 versus 1965 for the men. Given the years of graduation, it is safe to assume that many of these women likely faced significant barriers when they were law students; in 1972, women made up only 10% of the JDs (Catalyst 2009). Law school environments were not welcoming of women during the early 1970s, when their numbers were small (Epstein 1997). By contrast, women currently make up close to 50% of law students (Catalyst 2009). The women in our sample are also on average younger than their male counterparts are

[14] 65% of men are married, compared to 58% of women, a difference that is statistically significant to the 0.0167 level. 4.6% of men are divorced, compared to 5.6% of women, a difference that is not statistically significant.

[15] Lower marriage rates for women lawyers are also reported in the "After the JD" study for a cohort of women significantly younger (roughly ages 27-32) than those in our judge sample (roughly ages 50-65) (After the JD Study 2004).

[16] For senior lawyers, in 2008, one estimate is that 80% of male lawyers had children as compared to 66.67% of women. The same article also reports that women with U.S. law degrees are significantly more likely to be divorced than their male counterparts (roughly 10% of women with JDs versus 5% of men). (Wilson 2008).

(average age for the women is 64 and that for the men is 70). Comparing the judge's age at graduation from law school to their age when they become judges, we see that women rise more quickly to judgeships; it takes female judges, on average, twenty-one years from JD to judgeship, while takes male judges over twenty-six years.[17] As a result, women are younger (48 years old) than their male counterparts (51.5 years old) are when they become state high court judges.[18] We also find that women are older when they graduate from law school, regardless of the year of graduation. The foregoing is consistent both with the Preference Story and with the Screening Story. Looking at the Preference Story, the smaller pool of available women lawyers to choose from probably meant that those selecting judges had to go deeper into the pool--hence, selecting female judges who were younger and less experienced than are their male counterparts. On the other hand, women who are overachievers might take less time to accomplish professional goals, which fits the Screening Story.[19]

3.4. Type of Judicial Selection System

Finally, we examine the type of judicial selection systems most likely to yield female judges. The bottom portion of Panel A of Table 1 reports that female judges are most numerous in non-partisan election systems (and to a lesser extent, appointment systems).[20] It is hard to make much out of this, except perhaps that officials are more likely to engage in affirmative action than is the public.

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[17] The difference between the genders in time from JD to judgeship is statistically significant to the 0.00 level.

[18] The difference in age in becoming a judge is statistically significant to the 0.01 level.

[19] Women who graduated from law school prior to 1970 take 25 years to become a state high court judge, compared to the 27 year for men with a JD from pre-1970, a difference which is significant to the 0.02 level. Women who graduated after 1970 take 18 years to become a judge, compared to the 19.7 for men, a difference that is significant to the 0.01 level.

[20] We do not dwell on these differences because, as an initial matter, we see no reason to expect gender differences in performance to be exacerbated because of the type of judicial selection system. As explained

4. TESTING THE HYPOTHESES

4.1. Predictions of Gender Underperformance

Panel B of Table 1 reports the raw differences in publication rates, outside citations and independence.[21] Generally, men publish more, writing and publishing an average of 26.15 opinions per year, while women write and publish 24.09 opinions per year (difference significant at the 10% level).[22] The difference is even greater when we focus solely on published majority opinions. Male judges published 18.85 majority opinions per year; female judges published only 16.78 majority opinions per year (difference significant at the 5% level). However, women are cited[23] more than their male counterparts (0.81 outside state citations per opinion for women and 0.71 for men)[24] and are more independent (both differences significant at the 1% level). [25] At the first cut, then, women outperform men on two of three measures. However, the various states differ in terms of the characteristics of their legal systems and the types of disputes they receive. To say anything meaningful about gender differences, therefore, one has to correct for state differences.

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later, using state controls allows us to incorporate the effect of a variety of factors, including the selection system.

[21] We use slightly different levels of analysis for each of these measures: citations are measured at the individual citation level; production is measure for each judge for each year; and independence is for each judge with all years combined.

[22] This difference is statistically significant to the 0.10 level.

[23] We use citations from courts outside the state throughout the paper. We also test a variety of citation types, including law reviews and dividing the citing court into types; women are cited at the same level or more than their male counterparts are regardless of the type of court.

[24] The difference between men and women's citation rates is statistically significant to the 0.001 level.

[25] The difference in independence levels (0.0093 for women, -0.0516 for men) is statistically significant to the 0.001 level. A question that has been asked at workshops is whether the productivity numbers for women are inflated by their writing many short concurrences and dissents (the unstated claim being that the shorter opinions take less effort). To examine that question, we looked at page numbers of opinions published as an alternate measure of productivity and found no significant gender differences. We also examined the number of "yellow flags" and "red flags" on opinions for male and female judges and found that women had more yellow flags (significant at the 10% level). Yellow flags in Westlaw signify the presence of negative history for a case, suggesting that the reasoning in a case generated disagreement from other judges). On red flags, however, there were no significant gender differences. Red flags indicate that the case is no longer good for at least one point of law.

[Insert Table 2 about here.]

To correct for the different characteristics of the states, which could include differences in population, crime rates, court structures, judicial salaries, numbers of law clerks and so on. Instead, to control for all differences we use a state-fixed-effects estimation.[26] We estimate the following equations using ordinary least squares regressions on pooled judge-level data (Independence), judge-year level data (Production), and opinion-level data (Citations):

Independence Model:

$$\text{Independence}_i = \alpha + \beta_{1i}\text{Female} + \text{State Fixed Effects} + \text{Year Fixed Effects} + \varepsilon_i$$

Production Model:

$$\ln(1+\text{Majority\_Opinions})_i = \alpha + \beta_{1i}\text{Female} + \text{State Fixed Effects} + \text{Year Fixed Effects} + \varepsilon_i$$

Citation Model:

$$\ln(1+\text{Outside State Citations}_i) = \alpha + \beta_{1i}\text{Female} + \text{State Fixed Effects} + \text{Year Fixed Effects} + \varepsilon_i$$

As Table 2 shows, once we correct for state fixed effects, the gender differences for both publications and outside citations disappear, demonstrating that men and women are performing at roughly the same levels. Significant differences remain in the independence regressions after inserting state controls, with female judges scoring higher on independence. Thus far, our predictions (Hypotheses 1, 3 and 5) regarding female

[26] Because there is no reason to expect big variations in these state-specific variables in the three years in our sample (1998-2000), the fixed effects model should capture state differences.

judges underperforming find little support in the data. If anything, female judges have greater independence compared with their male counterparts.

To examine the question of who these men and women are further, we estimate separate models for each of our measures with a variety of control variables.

4.2. Controlling for Backgrounds

The judges in our sample vary on a number of individual characteristics, all of which might affect judicial outcomes. Some of these variables are proxies for human capital such as education, years of experience or one's primary prior profession being in the private sector. An important element of the Preference Story is that the female lawyers who become judges accumulate lower amounts of human capital during their careers (from law school, private practice and so on) and, therefore, will not perform as well as male judges. We find, as reported in Table 1, that women do indeed graduate from lower ranked law schools and undergraduate institutions, have less experience on the court or post-law school, and are generally younger. This suggests that the assumptions underlying the Preference Story have support. However, our state fixed-effects models reported above provide a contrary outcome from the Preference Story. These findings lead us to ask alternate questions about why we might see either insignificant or positive effects for gender on our measures judicial quality. The first question is whether the traditional measures of human capital, such as eliteness of legal education and private practice experience, have purchase in the gender and judging narrative?

If the answer is yes, that the Preference Story holds up, then we should expect to find significance for background variables in our production, quality, and independence

models. If the answer is no, and focusing on traditional measures of human capital is the wrong approach, we should see no significant effects of any background variable in the model. Table 3 displays how we tested which of the stories is correct.

We should note that the results reported already suggest that the Preference Story, with its emphasis on traditional human capital measures, does not hold up. If it had, we would have seen scores for women being significantly lower than those for men in our state fixed effects models, but those differences would have disappeared when we controlled for differences in levels of human capital acquisition (where, as reported, women had less). Instead, we found that while women did have lower levels of human capital (on the traditional measures), they still scored just as well as the men, even without controlling for background differences. The results reported below, which control for background variables, confirm the initial indications that reject the Preference Story.

Insert Table 3 about here

To each of our production, quality, and independence models, we add independent variables for a variety of judge-level background factors, collectively referred to as "judge controls." Our "judge controls" include the following: whether the judge was the chief judge of the high court (Chief Judge). A judge who is chief judge may have less time to author opinions. The chief judge may also command greater respect and receive greater numbers of citations as a result for her opinions. Alternatively, the chief may be able to assign herself the more important opinions and garner more citations that way (Langer, 2003). We include the number of years between 1998 and the year in which the judge received her law degree (Post Law-School

Experience) and the number of years the judge has been on the high court (Court Experience). More experienced judges may decide opinions with greater skill, leading to more citations. We include variables for whether a judge retired from the bench in 2001 or earlier and 0 otherwise (Retirement Close).

We also include a number of variables specific to the background of the individual judge measured as of 2000. These include the age of the judge (Age), whether the judge was married (Married), the judge's number of children (Number of Children), whether the judge was divorced (Divorced), and whether the judge's primary experience before becoming a judge was in private practice (Private Practice). We include the PAJID score for each judge as developed by Brace, Hall, and Langer (2000). These scores locate judges on a political continuum from highly conservative (0) to highly liberal (100). We lastly include variables relating to the judge's education including the U.S. News ranking of the Judge's law school measured in 2002 (US News JD Ranking), and whether the judge went to an in-state law school (In-State Law School.)

4.2.1. Publications

In the model for production with judge controls (reported in Column 1 of Table 3), with the log of the number of majority opinions as the dependent variable, Female remains insignificant. For all judges, whether the judge was the chief judge and whether the judge was close to retirement turn out to be relevant; both have a negative effect on publication rates. This is not surprising, as chief judges have additional responsibilities, while a judge who is close to retirement may be slowing down. The years-on-the-court variable has a positive effect, suggesting that publishing is a learned skill. None of the

traditional human capital measures, such as prior employment, law or undergraduate school rankings are significant.

4.2.3. Citations

We next turn to an examination of outside state citations to majority opinions with the addition of judge control variables to the model.[27] Results are reported in Column 2 of Table 3. Looking at all the judges, we see that Female remains insignificant. Moreover, except for chief judge none of the judge "control" variables are significant. The coefficient on Chief Judge is negative and significant at the 10% level. Judges who serve as chief judge receive significantly fewer outside state citations per opinion. Again, as with the production model, the human capital measures are insignificant.

4.2.4. Independence

We see in Column 3 of Table 2 that the coefficient on Female in the regression with the judge-controls while positive is now not significantly different from zero.[28] To summarize, the above three sets of findings are inconsistent with Hypotheses 1, 3 and 5. Indeed, we find little support for the Preference Story, as almost none of the background variables are significant.

Overall, all these findings suggest that women serving on state supreme courts are either able to overcome their lack of training, or that the job of being a state high court judge simply does not require skills learned in elite law schools and private practice. These results call into question the focus on traditional measures of human capital in predicting the performance of female (and male) judges.

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[27] The level of analysis here is the individual citation, so the number of observations is much higher. We have also included state, subject matter, and year controls.

[28] We also included a control for the ideology of the judge, the PAJID measure borrowed from our political science colleagues (Brace, Langer & Hall 2000). Theoretically, women could simply be more liberal than their male partisan counterparts, which could drive the difference in independence.

4.2.5. Predictions of Differential Interests

Our next two Hypotheses (2 and 4) draw upon the idea that women might have different subject area interests than men and, therefore, might invest effort in law making in different areas than men. One possible criticism of our results is that women are on par with men only because they excel in certain traditionally female-focused areas of law (such as family law). Outside of these areas, the Preference Story may still prevail. To examine this question, we examined publication and citation numbers as a function of specific subject areas.

[Insert Table 4 about here.]

Table 4 reports summary statistics on the number of majority opinions published per year categorized by gender and by subject matter (see Appendix for definition of subject matter categories). We find a wide variety of significant differences with simple difference of means tests. Generally, female judges publish fewer majority opinions in Administrative, Commercial, Labor, and the Other categories of cases. Some of these differences may be driven by underlying differences in case loads across the different states and other factors. To control for this, we estimate a regression model using the log of the number of published majority opinions within a subject matter category as the dependent variable and include Female, judge controls, and state and year fixed effects as independent variables. Table 4 reports that in the multivariate model, Female judges publish fewer majority opinions in the Church, Criminal, First Amendment, and Labor categories. Based on these models, women do seem to publish less than men in several areas. But none of these were as predicted (as "traditional" female-focused subject matter areas under Hypothesis 2), suggesting the possibility that these findings are no

more than noise. Moreover, there is no indication that women are publishing more cases in the Family law area. Hypothesis 2, in sum, seems to have little support.

Turning to Hypothesis 4, we examine whether women are cited less or more in specific subject areas. As women may been seen as experts in areas relating to family law or gender based rights, we expect that women will be cited more in these areas, but less in areas such as business law that are outside of women's stereotypical domain. Looking first at the average number of outside state citations per majority case published in each subject area, we see that women are cited more often than men in cases relating to the Capital and Family law cases.[29]

[Insert Table 5 about here.]

We estimate ordinary least square models with the log of 1 plus the number of outside state citations to majority opinions for each subject matter separate with gender, judge controls, and state and year fixed effects as independent variables. We find that Female gender is not significant in any of these models in explaining the number of outside state citations. The initial summary statistics suggest mild support for Hypothesis 4, in that women are cited more than men in family law. But that mild support disappears once the regressions are estimated. Further, female judges are not cited significantly less than are their male counterparts in any subject area, suggesting that other judges view female judge's opinions as holding the same weight as their male counterparts' opinions. Not only do female judges do just as well as male judges in the aggregate, they do so even at the level of specific subject matter areas.

5. Gender in the Federal Courts

[29] Men are cited more in areas that fall outside the basic subject areas (the "other" category).

To evaluate whether our results are unique to the state high courts, where there is tremendous variation in terms of court systems and state effects, we report data on the federal courts of appeals and district courts for roughly the same time periods (1998-00 for the courts of appeal and 2001-02 for the district courts). Owing to constraints in the datasets, we are able to estimate gender comparisons only on a subset of the hypotheses. Further, because of the relatively small size of the appeals court dataset, we were unable to use as many controls as we did with the state court data. To bring matters full circle, we report preliminary data on Judge Sotomayor while she was on the Second Circuit Court of Appeals (for the years 2004-06).

5.1 Appeals Courts

The data for the Courts of Appeals, collected for a prior project (Choi & Gulati 2004) has information for all the active circuit court judges during the period 1998 to 2000 who had been on the bench at least two years and were under the age of 65 at the time. Data was collected for the same three measures: majority opinion publication, outside federal circuit citations to majority opinions, and co-partisan disagreements.[30] We estimate regressions with controls for circuit effects since the circuits likely differ in both behavioral norms and caseloads.

[Insert Table 6 About Here]

Generally, we find that female appeals judges are slightly less likely to be cited by judges from outside their circuit, but have roughly the same rates of publication and independence as male judges. We also see similar patterns, in terms of background, to what we found in the state high courts. Compared to the men, women at the federal

[30] We did not have data on subject areas, so as to be able to test whether there were gender differences in the types of cases the judges wrote opinions or received citations in. Also because of the small number of female judges, we were unable to meaningfully test critical mass effects.

appellate level attended less prestigious colleges and law schools, were less likely to have their primary prior background be in private practice, and were younger when appointed to the bench.[31]

5.2 District Court

For the district courts, we used data for the approximately 575 federal district judges who were active in the 2001-02 period.[32] Because these judges sit individually, we are unable to calculate independence scores in a fashion similar to the state high courts. As with the federal appeals courts, we used circuit controls to adjust for possible differences in norms.[33]

[Insert Table 7 About Here]

We find significant gender differences in both publication rates and outside federal circuit citation rates, with women outperforming men. Unlike with the state high courts and the federal appeals courts, we do not find significant gender differences in terms of the judge background as measured by our judge controls (prestige of college, law school, experience in private practice, and age) in the district courts.

5.3. Judge Sotomayor Versus the Others

As Judge Sotomayor's statements and the reactions they generated were the starting point for our project, we examined data on her as well. Initially, to take advantage of our dataset from 1998-00, we examined her performance in roughly comparable years (1999-01). Roughly speaking, her scores would have put her in the

[31] As might be expected, given relative prestige levels of the court systems, the federal appeals court judges tended to have attended more prestigious colleges and law schools as compared to the state high court judges.

[32] There were approximately 650 district court judges who were active during the 2001-02 period. Owing to incomplete data on approximately 75 of these judges, however, we estimated our results only for the 575 for whom we have complete data. We are in the process of filling in the data on the remaining 75.

[33] We also estimated these regressions with district level controls, given possible variations in caseloads across districts. The basic gender results remain the same.

bottom half of the judges on citation and publication scores. The problem with this comparison though was that she only joined the bench in 1999 and we were comparing her to a set of judges, all of whom had at least two years of experience on the bench (Posner 2009a).

To estimate a more meaningful comparison, we calculated outside federal circuit citation and majority opinion publication scores for Judge Sotomayor for 2004-06. As a control, we estimated scores for six court of appeals judges who were rumored either to have been on President Obama's short list or President Bush's short list. In addition, we also included two other Second Circuit judges who were active during the same period, judges Calabresi and Raggi.

[Insert Table 8 About Here.]

The comparisons here are necessarily rough because there aren't enough judges to control for factors such as circuit effects. That said, Judge Sotomayor's citation scores (from both judges outside her circuit and academics) are among the highest of any of the judges in either president's short list (Posner 2009b; cf. also Anderson 2009).

6. Conclusion

We find little to no support for Preference Story's predictions that female judges would underperform male judges (Hypotheses 1, 3, and 5), as formed from the extant literature. Indeed, the prediction that women will underperform men in terms of independence scores was patently false. Women were more independent than men (directly contradicting Hypothesis 5), supporting the Selection Story. We also find that the equivalent performance of women and men judges is not driven by any specific

subject matter area effects (refuting Hypotheses 2 and 4). Women judges do not perform well because of outsized performance in traditionally women-focused subjects.

Perhaps our most striking finding is that the premise of the Preference Story is true (female judges have weaker credentials and less experience) but its conclusion is false (female judges and male judges perform about the same). What might account for this outcome?

First, the measures of credential and experience might be inaccurate. We have been told by some female judges that they went to lower-rank law schools in order to accommodate their husbands but did very well while at those schools. Our measures do not capture this phenomenon—that, for example, the type of woman who becomes a judge may be highly intelligent or motivated. It might also be the case that the rank of the law school, a few extra years of practice, and so forth, make little difference for the quality of judging.

Second, the measures of performance might be inaccurate. As we noted before, our measures of performance might not capture high-quality judicial performance. If so, we have a "garbage-in, garbage-out" problem.

Third, it is possible that, as Justice Sotomayor suggested before backtracking, women are naturally more gifted judges than men are. The various psychological differences between men and women might favor women, so that even if women have less training and experience, they end up being superior judges. It might also be the case that women's experiences give them a distinctive perspective that enhances their judicial talents.

To conclude, a couple of points regarding gaps in our analysis are in order. First, although we frame the threshold question in terms of the value of gender diversity, we only get at that question indirectly. Judges on the state high courts always sit in teams. Hence, an estimation of the value of gender diversity would compare the performance of gender diverse teams versus those of homogenous teams. These comparisons could be run in terms of various citations scores and perhaps also reversal rates.

Second, there are likely inter-generational differences embedded within the reported gender differences. Specifically, the performance predictions for the female judges who attended law school in the late 1960s and early 1970s may be different compared with those who attended law school one decade later, in the early 1980s and yet different again for those who were in school in the early 90s. Our dataset was not large enough to make these comparisons, but we hope to remedy this problem in later research.

To conclude, across a variety of courts, in an analysis of over 1000 judges, over multiple years, we find that women do just as well as the men in terms of basic judging measures. Further, female judges do not seem to demonstrate significant differences in the types of subject areas they are interested in, at least not in any fashion obviously connected to gender.

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Table 1

Panel A: Background Characteristics

	Men		Women		
	Mean	**Std. Dev.**	**Mean**	**Std. Dev**	**p-value**
Chief Judge	0.1809	0.0221	0.1667	0.0371	0.7451
Court Experience	7.9342	0.4188	4.8039	0.5441	0.0001
Post-Law School Experience	32.8942	0.4835	25.7660	0.8556	0.0000
Close To Retirement	0.3750	0.0278	0.1863	0.0387	0.0004
Age	58.5809	0.4851	52.9314	0.7933	0.0000
Private Practice	0.8355	0.0213	0.7647	0.0422	0.9975
PAJID	36.9277	1.2898	38.8382	2.2411	0.4579
US News BA Ranking	124.6352	4.9459	154.2937	10.3061	0.0023
US News JD Ranking	52.4013	2.3747	62.8700	4.5186	0.0321
In-State School	0.6213	0.0280	0.6000	0.0492	0.7057
Married	0.6494	0.0164	0.5778	0.0301	0.0167
Children	1.9141	0.0659	1.0556	0.0822	0.0000
Divorced	0.0459	0.0072	0.0556	0.0140	0.2592
LLM	0.1255	0.3319	0.0753	0.2653	0.9063
Prestigious Membership	0.4869	0.5006	0.5340	0.5013	0.2050
Selection Method					
Appointed	0.1993	0.4001	0.2524	0.4365	0.1280
Merit Selection	0.3300	0.4710	0.2233	0.4185	0.9792
Non-Partisan Elections	0.2614	0.4401	0.3689	0.4849	0.0187
Partisan Elections	0.2092	0.4073	0.1553	0.3639	0.8826

Panel B: Gender and Production, Citations, and Independence

	Men		Women		
	Mean	**Std. Dev.**	**Mean**	**Std. Dev**	**p-value**
Number of Total Published Opinions per Year	26.145	0.598	24.086	0.938	0.0792
Number of Published Majority Opinions per Year	18.846	11.909	16.783	10.209	0.0112
Number of Outside State Citations per Majority Opinion	0.7084	0.0148	0.8138	0.0295	0.0009
Independence Score	-0.0516	0.0118	0.0093	0.0190	0.0087

Table 2
Gender and Production, Outside Citations, and Independence

	Independence	Production: ln(Majority Opinions Per Year)	Citations: ln(1+Number of Outside State Citations to Majority Opinions)
Female	0.0641**	-0.0507	-0.000159
	(3.29)	(-1.21)	(-0.02)
Constant	-0.0252	2.979**	0.293**
	(-0.62)	(34.08)	(7.65)
Subject Matter Controls	No	No	Yes
State-Fixed Effects	Yes	Yes	Yes
Year Fixed Effects	No	Yes	Yes
N	350	1067	19473
R^2	0.299	0.481	0.085

t statistics in parentheses; + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$. Subject matter controls include indicator variables for the following case subject matter areas: administrative, Attorney and Client, Capital Punishment, Church and State, Commercial, Criminal, Family, First Amendment, Labor, Property, Rights, and Torts (with Other as the base category). The subject matter areas are defined in the Appendix. Opinion level controls include the number of dissents against the majority opinion, the number of West key pages, and the length of the opinion in pages.

Independence is defined as the Opposite_Pool – Opposite_Party. Opposite_Party is the number of opposing opinions written against a judge of the opposite party divided by the number of opposing opinions written against a judge of either the opposite or same party from 1998 to 2000. Opposite Pool is the total number of majority opinions authored by an opposite party judge divided by the total number of majority opinions authored by either an opposite or same party judge from 1998 to 2000. Independence_Indicator is defined as 1 if Independence is greater or equal to zero and 0 otherwise. Only judges for whom we could identify a political party were included in the analysis. We exclude judges from states where all judges in our sample were of the same political party from the analysis (Georgia, Maryland, New Mexico, South Carolina, South Dakota).

The quality measure is the average number of Outside State Citations per majority opinion. Outside Federal Court includes all citations from a federal district or circuit court located in a circuit that does not contain the state in question. Other State Court includes all citations from state courts outside of the state in question. US Supreme Court includes all citations from the U.S. Supreme Court. Outside State Citations is the sum of Outside Federal Court + Other State Court + US Supreme Court. All citations are from the LEXIS Shepard's database and are tracked up until January 1, 2007. Law Review Citations are for law reviews as tracked by the LEXIS Shepard's database (until January 1, 2007).

Table 3
Gender and Production, Outside Citations, and Independence with Judge Controls

	Independence	Production: ln(Majority Opinions Per Year)	Citations: ln(1+Number of Outside State Citations to Majority Opinions)
Female	0.0809**	-0.0672	0.00120
	(3.62)	(-1.31)	(0.10)
Chief Judge	-0.0071	-0.133**	-0.0176
	(-0.28)	(-2.59)	(-1.51)
Court Experience	0.0021	0.0110*	-0.000177
	(1.04)	(2.50)	(-0.20)
Post-Law School Experience	0.0001	0.000382	-0.00186+
	(0.08)	(0.06)	(-1.72)
Retirement Close	0.0271	-0.147**	0.00669
	(1.11)	(-3.56)	(0.59)
Age	0.0001	0.000479	0.000464
	(0.05)	(0.07)	(0.46)
Married	0.0286	-0.0378	-0.00106
	(1.05)	(-0.70)	(-0.08)
Number of Children	-0.00338	0.00364	0.00263
	(-0.37)	(0.23)	(0.70)
Divorced	0.0638	-0.0154	-0.00360
	(1.58)	(-0.20)	(-0.18)
Private Practice	-0.0344	0.0498	0.00885
	(-1.04)	(0.82)	(0.64)
PAJID	0.00004	0.000275	0.000300
	(0.07)	(0.27)	(1.26)
US News JD Ranking	-0.0006	0.000344	-0.000158
	(-1.64)	(1.48)	(-1.08)
In-State Law School	0.0286	-0.0309	0.0213+
	(1.18)	(-0.64)	(1.82)
Constant	-0.00460	2.802**	0.292**
	(-0.04)	(10.92)	(4.99)
Subject Matter Controls	No	No	Yes
State Fixed Effects	Yes	Yes	Yes
Year Fixed Effects	No	Yes	Yes
N	327	943	18433
R^2	0.339	0.534	0.087

t statistics in parentheses; + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$. Subject matter controls include indicator

variables for the following case subject matter areas: administrative, Attorney and Client, Capital Punishment, Church and State, Commercial, Criminal, Family, First Amendment, Labor, Property, Rights, and Torts (with Other as the base category). The subject matter areas are defined in the Appendix.

Table 4
Gender and Subject Matter Differences in Production

	Number of Majority Opinions Per Year - Men	Number of Majority Opinions Per Year - Women	p-value	Female Significant In Full Model?[34]
Administrative	1.354	1.139	0.0389	No
Attorney	0.578	0.566	0.8574	No
Capital	0.738	0.629	0.2643	No
Church	0.006	0.000	0.1993	Yes, Negative
Commercial	2.809	2.386	0.0311	No
Criminal	6.162	5.562	0.1386	Yes, Negative
Family	1.417	1.457	0.7938	No
First Amendment	0.062	0.037	0.1506	Yes, Negative
Labor	1.565	1.270	0.0157	Yes, Negative
Property	1.156	1.015	0.2047	No
Rights	0.298	0.330	0.5363	No
Torts	2.296	2.097	0.2206	No
Other	0.405	0.296	0.0668	No
Total	18.846	16.783	0.0112	No

[34] Each model used the number of citations for cases in each subject area as the dependent variable, with Female, judge controls, and state and year fixed effects as independent variables. This column indicates whether the Female gender variable is a significant predictor of the level of citations from outside the state a case receives, and whether the variable has a positive or negative effect.

Table 5
Gender and Subject Matter Differences in Citation Rates

	Number of outside state citations per opinion - Men	Number of outside state citations per opinion - Women	p-value	Female Significant In Full Model?[35]
Administrative	0.452	0.488	0.6787	No
Attorney	0.707	0.736	0.8430	No
Capital	0.786	1.170	0.0067	No
Church	--	--	--	--
Commercial	0.983	1.133	0.1983	No
Criminal	0.662	0.716	0.2759	No
Family	0.625	0.939	0.0064	No
First Amendment	1.191	1.182	0.9874	No
Labor	0.436	0.478	0.6529	No
Property	0.455	0.536	0.2908	No
Rights	1.203	0.976	0.4931	No
Torts	0.954	1.056	0.2855	No
Other	0.471	0.662	0.2471	No
Total	0.708	0.814	0.0009	No

There were no majority opinions authored by a Female judge in the Church category.

[35] Each model used the number of outside state citations for majority cases in each subject area as the dependent variable, with Female, judge controls, and state and year fixed effects as independent variables. As with the publication table, this column indicates whether the Female gender variable is a significant predictor of the level of citations from outside the state a case receives, and whether the variable has a positive or negative effect.

Table 6
Appeals Data

	Independence	Production (Majority Opinions)	Outside Federal Circuit Citations
Gender	-0.00988	-0.0654	-0.168+
	(-0.22)	(-1.13)	(-1.76)
Constant	-0.0515	4.554**	8.056**
	(-0.42)	(44.00)	(51.26)
Circuit-Level Controls	Yes	Yes	Yes
N	98	98	98
R^2	0.141	0.639	0.649

t statistics in parentheses
+ $p < 0.10$, * $p < 0.05$, ** $p < 0.01$

Table 7
District Court Data

	Production (Majority Opinions)	**Outside Federal Circuit Citations**
Gender	0.2792*	0.0552**
	(2.09)	(3.01)
Constant	2.0839**	0.535**
	(6.26)	(14.10)
Circuit-Level Controls	Yes	Yes
N	**[575]**	8781
R^2	0.639	0.03

t statistics in parentheses
+ $p < 0.10$, * $p < 0.05$, ** $p < 0.01$

Table 8
Sotomayor Data

	Production (Majority Opinions)	Outside Federal Circuit Citations
	2004-2006	
Calabresi	72	784
Clement	81	240
Garland	65	264
Garza	112	255
Jones	77	335
Lynch	215	998
McConnell	119	630
McKeown	67	404
Raggi	53	438
Schroeder	60	120
Sotomayor	90	706
Wardlaw	51	207
Wilkinson	88	537
Williams	123	397
Wood	156	831
	1999-2001	
Sotomayor	73	280

APPENDIX
Judge-Level Variable Definitions

Variable	Definition
Chief Judge	For year-level data, indicator variable equal to 1 if the judge in question is the chief judge of the court in the year in question and 0 otherwise. For pooled data, indicator variable equal to 1 if the judge in question is the chief judge of the court for any year from 1998 to 2000 and 0 otherwise.
Court Experience	For year-level data, the difference between the year in question and the year the judge first joined the high court. For pooled data, the difference between 1998 and the year the judge first joined he high court (if the judge started on the court in 1998 or later court experience is set to 0).
Post-Law School Experience	The difference between 1998 and the year the judge graduated law school.
Retirement Close	Indicator variable equal to 1 if the judge in question retired from the bench in 2001 or earlier and 0 otherwise.
Age	Age of the judge in years.
Married	Indicator variable equal to 1 if the judge is married as of the year 2000 and 0 otherwise.
Number of Children	The number of children a judge had as of the year 2000.
Divorced	Indicator variable equal to 1 if the judge is divorced as of the year 2000 and 0 otherwise.
Private Practice	Indicator variable equal to 1 if the judge had private practice experience before becoming a judge and 0 otherwise.
PAJID Score	PAJID score for each judge as developed by Brace, Hall & Langer (2000). These scores locate judges on a political continuum from highly conservative (0) to highly liberal (100).
US New JD Ranking	The US News rankings of the judge's law school measured as of 2002
In-State Law School	Indicator variable equal to 1 if the judge is went to an in-state law school and 0 otherwise.

APPENDIX - continued
Subject Matter Categories

Variable	Definition
Administrative	Review of Agency/Government Decisionmaking (not in another subject matter category). Also includes Government Actions (e.g., State suit to comply with state statute that does not fit in other categories); private actions suing state actors for negligence, etc (unless the case involves prisoner rights which is included in the "Criminal" category of cases).
Attorney and Client	Attorney Misconduct; Attorney fees (unless fits in one of above categories); Disbarment; Contempt of court order against attorney.
Capital Punishment	Capital Punishment-related actions.
Church and State	Pledge of Allegiance; Funding for Private Religious Schools; Prayer in School; Ten Commandments.
Commercial	Contracts; Insurance; Private arbitration; Creditor v. Debtor; Lessor-Lessee; Usury Laws; Franchise v. Franchisor; Employment Contractual Disputes; Corporate Law; Piercing the Corporate Veil; Tax; Bankruptcy; Enforcement of mechanics lien; Implied warrant of merchantability.
Criminal	Sentencing Guidelines; Prisoners Rights; Murder; Rape; Drugs/Controlled Substances; Attorney-Client Privilege in Criminal Context; Grand Jury-related; Juvenile Criminals. Excludes Capital Punishment cases.
Family	Divorce; Adoption; Child Support; Probate/Inheritance.
First Amendment	Employment issues (excluding employment contractual disputes); ERISA; National Labor Relations Board (NLRB); Occupational Safety and Health Act (OSHA); Fair Labor Standards Act (FLSA); Wrongful Discharge; Labor Management Relations Act (LMRA); Family and Medical Leave Act (FMLA); Employee Benefits; Worker's Compensation claims; Retaliatory Discharge claims.
Labor	Employment issues (excluding (1) employment contractual disputes that are not Workers Comp or state administrative wage rate related—these go to "Commercial" and (2) excluding discrimination-type claims that fit in "Civil Rights"); ERISA; NLRB; Occupational Safety and Health Act (OSHA); Fair Labor Standards Act (FLSA); Wrongful Discharge; Labor Management Relations Act (LMRA); Family and Medical Leave Act (FMLA); Employee Benefits; Worker's Compensation claims; Retaliatory Discharge claims; State Wage Rate Claims.
Property	Takings claims; Zoning issues; Property rights; Property Licensing-Related or Permit-Related; Landlord-Tenant-Related.
Rights	Race Discrimination; Sex Discrimination; Affirmative Action; Civil Rights; Age Discrimination; Privacy; Handicap Discrimination; Abortion (includes discrimination in employment context cases); Voting Rights-Voting Related.

Torts	Federal Tort Related Act; Medical Malpractice; Products Liability; Wrongful Death; Libel; etc.
Other	All other cases.